
THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH

PAUL WACH,

Plaintiff,

v.

UTAH BOARD OF PARDONS AND
PAROLE et al.,

Defendants.

**MEMORANDUM DECISION & ORDER
TO CURE DEFICIENT COMPLAINT**

Case No. 2:20-CV-847-JNP

District Judge Jill N. Parrish

In this *pro se* prisoner civil-rights action, *see* 42 U.S.C. § 1983,¹ having screened Plaintiff's Complaint, ECF No. 1, under its statutory review function,² the court orders Plaintiff to file an amended complaint to cure deficiencies before further pursuing claims.

¹ Section 1983 reads, in pertinent part:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable.

²The screening statute reads:

(a) Screening.—The court shall review . . . a complaint in a civil action in which a prisoner seeks redress from a governmental entity or officer or employee of a governmental entity.

(b) Grounds for dismissal.—On review, the court shall identify cognizable claims or dismiss the complaint, or any portion of the complaint, if the complaint—

(1) is frivolous, malicious, or fails to state a claim upon which relief may be granted; or

COMPLAINT'S DEFICIENCIES

The complaint:

(a) improperly names Utah Department of Corrections and Utah Board of Pardons and Parole (UBOP) as § 1983 defendants, though not independent legal entities that can sue or be sued.

(b) has claims against members of UBOP, even though they are entitled to absolute immunity for actions “taken in performance of the Board’s official duties regarding the granting or denying of parole.” *See Knoll v. Webster*, 838 F.2d 450, 451 (10th Cir. 1988).

(c) possibly asserts claims attacking his conviction or the validity of his sentence, which should be brought in a habeas-corpus petition, not a civil-rights complaint.

(d) asserts claims possibly invalidated by the rule in *Heck v. Humphrey*, 512 U.S. 477 (1994).

(e) fails to state a constitutional claim regarding parole, which is not federal right.

(f) does not acknowledge potential Eleventh Amendment immunity attaches to UBOP decisions.

(g) possibly attacks the constitutionality of Utah’s indeterminate-sentencing scheme, but similar challenges have been soundly rejected by Tenth Circuit. *See Straley v. Utah Bd. of Pardons*, 582 F.3d 1208 (10th Cir. 2009).

(h) apparently seeks redress for breaches of state procedural rules, which are not viable claims in a federal civil-rights case.

(i) possibly asserts claims for which the statute of limitations has passed for a civil-rights case.

(j) does not affirmatively link constitutional violations to several of the named defendants.

(k) has claims apparently regarding confinement; however, the complaint apparently was not drafted with contract attorneys’ help.

GUIDANCE FOR PLAINTIFF

(2) seeks monetary relief from a defendant who is immune from such relief.

28 U.S.C. § 1915A.

Federal Rule of Civil Procedure 8 requires a complaint to contain “(1) a short and plain statement of the grounds for the court's jurisdiction . . . ; (2) a short and plain statement of the claim showing that the pleader is entitled to relief; and (3) a demand for the relief sought.” Rule 8's requirements are intended to guarantee “that defendants enjoy fair notice of what the claims against them are and the grounds upon which they rest.” *TV Commc'ns Network, Inc. v ESPN, Inc.*, 767 F. Supp. 1062, 1069 (D. Colo. 1991).

Pro se litigants are not excused from meeting these minimal pleading demands. “This is so because a pro se plaintiff requires no special legal training to recount the facts surrounding his alleged injury, and he must provide such facts if the court is to determine whether he makes out a claim on which relief can be granted.” *Hall v. Bellmon*, 935 F.2d 1106, 1110 (10th Cir. 1991). Moreover, it is improper for the court “to assume the role of advocate for a pro se litigant.” *Id.* Thus, the court cannot “supply additional facts, [or] construct a legal theory for plaintiff that assumes facts that have not been pleaded.” *Dunn v. White*, 880 F.2d 1188, 1197 (10th Cir. 1989).

Plaintiff should consider these general points before filing an amended complaint:

(i) The revised complaint must stand entirely on its own and shall not refer to, or incorporate by reference, any portion of the original complaint. *See Murray v. Archambo*, 132 F.3d 609, 612 (10th Cir. 1998) (stating that amended complaint supersedes the original complaint). The amended complaint also may not be added to after it is filed without moving for amendment.³

³ The rule for amending a pleading reads:

(a) Amendments Before Trial.

(1) Amending as a Matter of Course. A party may amend its pleading once as a matter of course within:

(A) 21 days after serving it, or

(B) if the pleading is one to which a responsive pleading is

(ii) The complaint must clearly state what each defendant—typically a named government employee—did to violate Plaintiff’s civil rights. *See Bennett v. Passic*, 545 F.2d 1260, 1262-63 (10th Cir. 1976) (stating that personal participation of each named defendant is an essential allegation in a civil-rights action). “To state a claim, a complaint must ‘make clear exactly *who* is alleged to have done *what* to *whom*.’” *Stone v. Albert*, 338 F. App’x 757, 759 (10th Cir. 2009) (unpublished) (emphasis in original) (quoting *Robbins v. Oklahoma*, 519 F.3d 1242, 1250 (10th Cir. 2008)). Plaintiff should also include, to the extent possible, specific dates or at least estimates of when alleged constitutional violations occurred.

(iii) Each cause of action, together with the facts and citations that directly support it, should be stated separately. Plaintiff should be as brief as possible while still using enough words to fully explain the “who,” “what,” “where,” “when,” and “why” of each claim. *Robbins*, 519 F.3d at 1248 (“The *Twombly* Court was particularly critical of complaints that ‘mentioned no specific time, place, or person involved in the alleged [claim].’ Given such a complaint, ‘a defendant seeking to respond to plaintiff’s conclusory allegations . . . would have little idea where to begin.’” (internal citations omitted)).

required, 21 days after service of a responsive pleading or 21 days after service of a motion under Rule 12(b), (e), or (f), whichever is earlier.

(2) Other Amendments. In all other cases, a party may amend its pleadings only with the opposing party’s written consent or the court’s leave. The court should freely give leave when justice so requires.

FED. R. CIV. P. 15.

(iv) Plaintiff may not name an individual as a defendant based solely on supervisory position. *See Mitchell v. Maynard*, 80 F.2d 1433, 1441 (10th Cir. 1996) (stating supervisory status alone does not support § 1983 liability).

(v) Grievance denial alone, with no connection to the “violation of constitutional rights alleged by plaintiff, does not establish personal participation under § 1983.” *Gallagher v. Shelton*, 587 F.3d 1063, 1069 (10th Cir. 2009).

(vi) “No action shall be brought with respect to prison conditions under . . . Federal law . . . by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted.” 42 U.S.C. § 1997e(a). However, Plaintiff need not include grievance details in his complaint. Exhaustion of administrative remedies is an affirmative defense that must be raised by Defendants. *Jones v. Bock*, 549 U.S. 199, 216 (2007).

I. Heck

Plaintiff's claims appear to include some allegations that, if true, may invalidate his conviction or sentence. “In *Heck*, the Supreme Court explained that a § 1983 action that would impugn the validity of a plaintiff's [incarceration] cannot be maintained unless the [basis for incarceration] has been reversed on direct appeal or impaired by collateral proceedings.” *Nichols v. Baer*, 315 F. App'x 738, 739 (10th Cir. 2009) (unpublished) (citing *Heck v. Humphrey*, 512 U.S. 477, 486-87 (1994)). *Heck* keeps litigants “from using a § 1983 action, with its more lenient pleading rules, to challenge their conviction or sentence without complying with the more stringent exhaustion requirements for habeas actions.” *Butler v. Compton*, 482 F.3d 1277, 1279 (10th Cir. 2007) (citation omitted). *Heck* clarified that “civil tort actions are not appropriate vehicles for challenging the validity of outstanding criminal judgments.” *See* 512 U.S. at 486.

Plaintiff argues that his constitutional rights were breached in a way that may attack his very imprisonment. *Heck* requires that, if a plaintiff requests § 1983 damages, this court must decide whether judgment for the plaintiff would unavoidably imply that his incarceration is invalid. *See id.* at 487. Here, it appears that it may on some claims. If this court were to conclude that Plaintiff's constitutional rights were violated in a prejudicial manner, it would be stating that Plaintiff's incarceration is not valid. Thus, the involved claims "must be dismissed unless the plaintiff can demonstrate that the conviction or sentence has already been invalidated." *Id.* This apparently has not happened and may require dismissal of some of Plaintiff's claims.

II. Right to Parole

Plaintiff's arguments about the invalidity of his conviction and sentencing may not state a constitutional violation. After all, "[t]here is no constitutional or inherent right of a convicted person to be conditionally released before the expiration of a valid sentence." *Greenholtz v. Inmates of Neb. Penal & Corr. Complex*, 442 U.S. 1, 7 (1979). "Parole is a privilege," not a constitutional right. *See Lustgarden v. Gunter*, 966 F.2d 552, 555 (10th Cir. 1992). Further, it is well established that the Utah parole statute does not create a liberty interest entitling prisoners to federal constitutional protection. *See Malek v. Haun*, 26 F.3d 1013, 1016 (10th Cir. 1994). Because Plaintiff has no right to parole under the Federal Constitution, he may not challenge denial of parole in this federal suit. *See Olim v. Wakinekona*, 461 U.S. 238, 250 (1983). Therefore, the court concludes that Plaintiff may have failed to state a claim here.

III. Affirmative Link

[A] plaintiff who brings a constitutional claim under § 1983 can't obtain relief without first satisfying the personal-participation requirement. That is, the plaintiff must demonstrate the defendant "personally participated in the alleged constitutional violation" at

issue. *Vasquez v. Davis*, 882 F.3d 1270, 1275 (10th Cir. 2018). Indeed, because § 1983 is a “vehicle[] for imposing personal liability on government officials, we have stressed the need for careful attention to particulars, especially in lawsuits involving multiple defendants.” *Pahls v. Thomas*, 718 F.3d 1210, 1225 (10th Cir. 2013); *see also Robbins v. Oklahoma*, 519 F.3d 1242, 1250 (10th Cir. 2008) (explaining that when plaintiff brings § 1983 claims against multiple defendants, “it is particularly important . . . that the complaint make clear exactly *who* is alleged to have done *what* to *whom*”); *Tonkovich v. Kan. Bd. of Regents*, 159 F.3d 504, 532-33 (10th Cir. 1998)) (holding that district court’s analysis of plaintiff’s § 1983 claims was “infirm” where district court “lump[ed]” together plaintiff’s claims against multiple defendants—“despite the fact that each of the defendants had different powers and duties and took different actions with respect to [plaintiff]”—and “wholly failed to identify specific actions taken by particular defendants that could form the basis of [a constitutional] claim”).

Estate of Roemer v. Johnson, 764 F. App’x 784, 790-91 (10th Cir. 2019).

“A plaintiff’s failure to satisfy this requirement will trigger swift and certain dismissal.” *Id.* at 790 n.5. Indeed, the Tenth Circuit has “gone so far as to suggest that failure to satisfy the personal-participation requirement will not only justify dismissal for failure to state a claim; it will render the plaintiff’s claim frivolous.” *Id.*

IV. Statute of Limitations

“Utah’s four-year residual statute of limitations . . . governs suits brought under section 1983.” *Fratus v. DeLand*, 49 F.3d 673, 675 (10th Cir. 1995). Plaintiff’s claims accrued when “‘facts that would support a cause of action [were] or should [have been] apparent.’” *Id.* at 675 (citation omitted). From the complaint’s face, some circumstances possibly occurred more than four years before this case was filed.

ORDER

IT IS HEREBY ORDERED that:

(1) Plaintiff must within thirty days cure the complaint's deficiencies noted above by filing a document entitled, "Amended Complaint," that does not refer to or include any other document.

(2) The Clerk's Office shall mail Plaintiff the Pro Se Litigant Guide with a blank-form civil-rights complaint and habeas-corpus petition which Plaintiff must use if he wishes to pursue his potential claims further.

(3) If Plaintiff fails to timely cure the above deficiencies according to this Order's instructions, this action will be dismissed without further notice.

(4) Plaintiff shall not try to serve the amended complaint on Defendants; instead, the court will perform its screening function and determine itself whether the amended complaint warrants service. No motion for service of process is needed. *See* 28 U.S.C. § 1915(d) ("The officers of the court shall issue and serve all process, and perform all duties in [*in forma pauperis*] cases."). All defendants and claims should be included in an amended complaint, if filed, and will not be considered further by the court unless properly included.

(5) For purposes other than waiver of filing fee, Plaintiff's motion to proceed *in forma pauperis* is **GRANTED**. (ECF No. 18.)

DATED this 3rd day of January, 2022.

BY THE COURT:



JUDGE JILL N. PARRISH
United States District Court